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Supreme Court of the United States

October Term, 1959

No. 152

THOMAS W. NELSON and ARTHUR GLOBE,
Petitioners,

against

COUNTY OF LOS ANGELES, ET AL.,
Respondents.

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District

NOTICE OF MOTION FOR LEAVE TO FILE ~~BRIEF~~ *AMICUS CURIAE* AND BRIEF

MURRAY A. GORDON,
Attorney for National Association of Social Workers, Amicus Curiae.

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

The National Association of Social Workers respectfully moves this Court for leave to file the accompanying brief as *amicus curiae.*

The National Association of Social Workers was formed on October 1, 1955, as the successor of the American Association of Group Workers, American Association of Medical Social Workers, American Association of Psychiatric Social Workers, American Association of Social Workers, Association for the Study of Community Organization, National Association of School Social Workers, and the Social Work Research Group. The organization has a membership of 25,000 and 153 chapters. Membership is available to any person who has been graduated from a graduate professional school of social work accredited by the Council on Social Work Education or, prior to June 30, 1952, by the American Association of Schools of Social Work.

Our purpose and activities include the following: To promote the quality and effectiveness of social work practice in the United States of America through services to the individual, the group and the community; to further the broad objectives of improving conditions of life in our democratic society through utilization of the professional knowledge and skills of social work, and to expand through research the knowledge necessary to define and attain these goals; to provide opportunity for the social work profession to work in unity toward maintaining and promoting high standards of practice and of preparation for practice and toward alleviating or preventing sources of deprivation, distress and strain susceptible of being influenced by social work methods and by social action. To implement the foregoing, the National Association of Social Workers engages in a variety of educational and other activities, including the publication, since 1957, of the Social Work Year Book.

Our interest in the instant proceeding derives from our concern for the development of acceptable social work personnel standards and practices which we believe jeopardized by the California procedures here under review. The record here discloses the discharge by the County of Los Angeles of two competent and satisfactory social workers for no cause other than the concededly proper exercise by them of a constitutional privilege before the House Committee on Un-American Activities with respect to questions, concerning their political associations, as to which petitioners had previously made the required disclosure to Los Angeles. Our membership is necessarily interested and adversely affected when the tenure and the job security of social workers is thus disregarded for insufficient cause.

In the accompanying brief we argue that in these cases the California District Court of Appeal, Second Appellate District, misconceived the meaning of this Court's deci-

sion in *Slochower* v. *Board*, 350 U. S. 551, as supplemented by the rulings in *Beilan* v. *Board*, 357 U. S. 399, and *Lerner* v. *Casey*, 357 U. S. 468. The thrust of the cited series of decisions is that the proper claim of privilege by a local civil servant before a congressional committee may not be the occasion for his dismissal absent any showing of a failure on his part to make full and candid answer to appropriate inquiries by his employer. The effect of *Slochower* is not to be avoided by the hearing afforded the petitioner Nelson before the Los Angeles Civil Service Commission; that hearing was evidently addressed solely to the inquiry whether Nelson in fact claimed privilege and involved no failure by Nelson to answer inquiries put by his employer. The foregoing argument we believe not to have been fully developed in the brief of petitioners and, accordingly, we ask leave to submit our brief thereon.

We have sought and obtained the consent of counsel for both parties to the filing of this brief.

Respectfully submitted,

MURRAY A. GORDON,
Attorney for *Amicus Curiae*,
401 Broadway,
New York 13, New York.

Dated: New York, N. Y.,
November 2, 1959.

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BRIEF OF *AMICUS CURIAE*

This brief is respectfully submitted by the National Association of Social Workers, as *amicus curiae*, in support of the petitioners herein. Our interest in the issues raised is set forth in the preceding motion for leave to file this brief.

Statement of the Case

The statement contained in petitioners' brief fairly and fully states the facts herein and is not here repeated. We would, however, make reference to one circumstance not developed by petitioners:

Before the House Committee on Un-American Activities each of the petitioners claimed privilege as to numerous questions. But only in four instances were the petitioners thereafter directed to answer (see R. 25-26, 30, 162-163),

and in one of those instances an answer was forthcoming upon such direction (see R. 162). To the extent that respondents have designated in their pleadings the unanswered questions for which petitioners have been discharged (see R. 114, 174-176; see also R. 104-105, 178), there was either no direction to answer or the questions do not appear to fall within the scope of the California statute (Code, § 1028.1) upon which respondents rely.[1] It is well settled that no testimonial duty or obligation arises until a witness is directed to answer after he has noted his objection to a question. *Quinn* v. *United States*, 349 U. S. 155; *Bart* v. *United States*, 349 U. S. 219; *Emspak* v. *United States*, 349 U. S. 190; *Scull* v. *Virginia*, 359 U. S. 344; *Raley* v. *Ohio*, 360 U. S. 423; *Browder* v. *United States*, D. D. C., March 14, 1951 (unreported) (see 40 Georgetown Law J. 137). Absent such duty or obligation, a refusal to testify cannot reasonably be deemed "insubordination" within the meaning of § 1028.1. *Beilan* v. *Board*, 357 U. S. 399, 408.

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[1] § 1028.1 requires answers to questions relating (1) to advocacy of violent revolution; (2) present knowing membership in an organization now engaged in such advocacy; (3) past knowing membership since September 10, 1948, in an organization then engaged in such advocacy; and (4) present knowing membership in the Communist Party or past knowing membership in the Communist Party since September 10, 1948. Both petitioners were specifically questioned by the House Committee as the advocacy and membership designated by § 1028.1 and claimed privilege; *but neither petitioner was directed to answer any of those questions.* Instead, Nelson was directed to answer only the questions whether he was returned to the United States from Japan "under the provisions of Public Law 808 * * * as a security risk" (R. 25-26) and whether the signature appearing at the end of an employment application bearing his name was his signature (R. 29-30), while Glolie was directed to answer whether he was "familiar" with the "John Reid Club of the Communist Party" at the University of Southern California where he was a graduate student from 1946 to 1950 (R. 162-163).

Argument

The decisions of this Court have clearly staked out the boundaries governing the issues here raised. The County of Los Angeles is entitled to make reasonable and relevant inquiries of its employees in matters appertaining to their loyalty (*Garner* v. *Los Angeles Board*, 341 U. S. 716), and refusal to answer such inquiries may be the basis of dismissal (*Beilan* v. *Board*, 357 U. S. 399; *Lerner* v. *Casey*, 357 U. S. 468). But no such consequence may follow merely from a refusal to testify, upon a proper claim of privilege, before a congressional committee (*Slochower* v. *Board*, 350 U. S. 551). Since here the dismissals were based upon the refusal to testify before the House Committee on Un-American Activities on grounds of privilege, and not for any failure to respond to inquiries made by the petitioners' employers, these cases come within the ambit of *Slochower*.

The decisive significance here, as in *Slochower*, of petitioners' silence under a proper claim of privilege is disclosed by *Beilan*. For as Mr. Justice Harlan there pointed out, at 357 U. S., pp. 478-479, the claim of privilege is not available either under the Fifth or the Fourteenth Amendments, when asserted in the course of a local investigation, as compared with the protection, pursuant to *Slochower*, which is "as a matter of policy or constitutional requirement, to be accorded persons who under similar circumstances, in a federal inquiry, validly invoke the federal privilege" (357 U. S., at p. 479). The instant cases, as *Slochower* and unlike *Beilan* and *Lerner*, involve the consequence of dismissal following a proper and authorized claim of privilege, and, therefore, the conclusion reached in *Slochower* is mandated.

The plain applicability of *Slochower* here is not to be avoided in Nelson's case by the Civil Service Commission hearing which was accorded Nelson. Examination of the record before the Commission reveals that the sole testimony offered by the Department of Charities was that of

Nelson's employment by the Department (R. 2), Nelson's oaths of loyalty (R. 2) and negative response to the application form query concerning Communist Party membership (R. 3), Nelson's appearance and testimony before the House Committee on Un-American Activities (R. 3-5), and, finally, Nelson's discharge (R. 5). In short, the hearing was devoted exclusively to proof of the undisputed fact that Nelson had claimed his privilege before the House Committee while employed by the Department of Charities, and to argument of counsel concerning the significance of such claim. Nelson was neither asked, nor volunteered, at the Civil Service Commission hearing, concerning the matters as to which he had declined to testify before the House Committee.

Nelson's case differs from *Slochower*, therefore, only in that Nelson failed to volunteer at the Civil Service Commission hearing an explanation of what had transpired before the House Committee. Presumably Slochower could have similarly volunteered to explain to the New York Board of Higher Education about the matters as to which he remained silent before the Senate committee, yet no such requirement is to be found in *Slochower*.

The substantial identity between *Slochower* and Nelson's case, notwithstanding the Civil Service Commission hearing attended by Nelson, further emerges from the record; it nowhere there appears that Nelson was advised or on notice that he had some duty or obligation to explain his constitutionally authorized claim of privilege before the House Committee. Nelson was thus no more apprised of his duties or his rights to explain than was Slochower. For § 1028.1, on its face, no more contemplates a Civil Service Commission inquiry into the grounds for the claim of privilege than does § 903 of the New York City Charter involved in *Slochower* and *Board* v. *Mass.* 47 A. C. 501—the California ruling which established that, pursuant to *Slochower*, dismissal of an employee for a claim of privilege must be preceded by "a full hearing and a determination that his reasons for invoking the privilege are not sufficient"—was not decided until December 21, 1956, more than six months after Nelson's Civil Service Commission hearing.

CONCLUSION.

The judgment of the Court below should be reversed.

Respectfully submitted,

MURRAY A. GORDON,
Attorney for National Association of Social Workers, Amicus Curiae.